

1 Rule 803. Hearsay exceptions; availability of declarant immaterial.

2 The following are not excluded by the hearsay rule, even though the declarant is available as
3 a witness:

4 (1) Present sense impression. A statement describing or explaining an event or condition
5 made while the declarant was perceiving the event or condition or immediately thereafter.

6 (2) Excited utterance. A statement relating to a startling event or condition made while the
7 declarant was under the stress of excitement caused by the event or condition.

8 (3) Then existing mental, emotional, or physical condition. A statement of the declarant's
9 then existing state of mind, emotion, sensation, or physical condition (such as intent, plan,
10 motive, design, mental feeling, pain, and bodily health), but not including a statement of memory
11 or belief to prove the fact remembered or believed unless it relates to the execution, revocation,
12 identification, or terms of declarant's will.

13 (4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes
14 of medical diagnosis or treatment and describing medical history, or past or present symptoms,
15 pain, or sensations, or the inception or general character of the cause or external source thereof
16 insofar as reasonably pertinent to diagnosis or treatment.

17 (5) Recorded recollection. A memorandum or record concerning a matter about which a
18 witness once had knowledge but now has insufficient recollection to enable the witness to testify
19 fully and accurately, shown to have been made or adopted by the witness when the matter was
20 fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the
21 memorandum or record may be read into evidence but may not itself be received as an exhibit
22 unless offered by an adverse party.

23 (6) Records of regularly conducted activity. A memorandum, report, record, or data
24 compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the
25 time by, or from information transmitted by, a person with knowledge, if kept in the course of a
26 regularly conducted business activity, and if it was the regular practice of that business activity to
27 make the memorandum, report, record, or data compilation, all as shown by the testimony of the
28 custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule
29 902(12), or a statute permitting certification, unless the source of information or the method or
30 circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this

paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with the provisions of paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of Paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

(11) Records of religious organization. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious

organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation concerning personal or family history. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Reputation concerning boundaries or general history. Reputation in a community arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or State or nation in which located.

(21) Reputation as to character. Reputation of a person's character among associates or in the community.

(22) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the prosecution in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(23) Judgment as to personal, family or general history, or boundaries. Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

~~(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purpose of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

Advisory Committee Note B This rule is the federal rule verbatim. The 2001 amendment adopts changes made to Federal Rule of Evidence 803(6) effective December 1, 2000.